



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, FFL, MNDCL-S

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a return of all or part of the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties were accompanied by individuals who assisted them in representing themselves.

The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the undisputed testimony I find that the landlord was duly served with the materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that he served the landlord's application for dispute resolution dated February 28, 2018 and evidence on the tenant by registered mail sent to the forwarding address provided by the tenant. The landlord submitted into evidence copies of the Canada Post tracking numbers as evidence of service. The tenant denied

receiving any materials from the landlord. The tenant testified that the address to which the landlord mailed their application was provided as their forwarding address in September, 2017. The tenant said that they later moved in December, 2017 and they provided a new forwarding address to the landlord at that time.

The tenant testified that they provided the landlord with a second forwarding address in December, 2017 but there was little evidence submitted in support of their position. No documentary evidence showing that the tenants' address for service changed was submitted. I further note that the tenants have not changed their service address for their present application. Based on the foregoing I find that the initial forwarding address provided by the tenants was an effective address for service. I accept the landlord's evidence that they served their application package to that address by registered mail on February 28, 2018. Pursuant to sections 88, 89 and 90 of the *Act*, I find that the landlord's application package was deemed served on the tenants on March 5, 2018, five days after mailing.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is the tenant entitled to a return of all or a portion of the security deposit?

Is either party entitled to a return of the filing fee from the other?

Background and Evidence

This tenant began in August, 2017 and the tenant vacated the rental unit at the end of the month. The monthly rent was \$1,300.00 payable on the first of each month. The tenancy agreement also provides that the tenants are responsible for paying a portion of the electricity and natural gas bill for the rental building. A security deposit of \$650.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenants seek a monetary award in the amount of \$1,695.72 for the following items:

Item	Amount
Double Security Deposit (\$650.00 x 2)	\$1,300.00
Repairs to Rental Unit	\$395.72
TOTAL	\$1,695.72

The tenant submits that after they moved out of the rental unit they were asked by the landlord to replace the kitchen hinges in the rental unit and they paid for the replacement. The tenant said they would not have incurred this cost if they knew they were not obligated to make the payment.

The landlord seeks a monetary award of \$1,440.30 for the following items:

Item	Amount
Painting Rental Unit	\$1,365.00
Utility Arrears	\$75.50
TOTAL	\$1,440.50

The landlord testified that they needed to paint the rental unit after the tenants vacated. The landlord said that there were unpaid utility bills and the total arrears is \$75.50 for the tenancy. The landlord submitted into written evidence the copies of the invoices for the losses.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on August 31, 2017 and the tenant gave the landlord the forwarding address in writing on or about that date. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*.

While the landlord testified that they were told by the tenants that they could retain the security deposit, the tenants dispute they made such a concession. The *Act* requires that any such authorization be in writing specifically to avoid this present situation. I find that there was no written authorization provided by the tenants that the landlord may retain any portion of the security deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenants did not provide written authorization that the landlord may retain any portion of the security deposit for this tenancy. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$1,300.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the tenants' claim for a monetary award for damages. While I accept the tenants' evidence that they incurred a cost for repairs to the rental unit I am unable to find that the loss was incurred due to a violation on the part of the landlord. The tenant gave evidence that they chose to make the payment to the landlord. The tenant said that they were unaware that they were not obligated to make the payment. However, I find there is insufficient evidence that the payment was obtained through a violation of the landlord. Consequently, as I do not find that this payment flowed as a result of a violation by the landlord I dismiss this portion of the tenants' claim.

The landlord submits that they needed to paint the rental unit after the tenants vacated. However, in the absence of a condition inspection report or any documentary evidence showing the state of the rental unit at the beginning and end of the tenancy I find that

there is insufficient evidence that this was a loss incurred as a result of the tenants' actions or negligence. Accordingly, I dismiss this portion of the landlord's claim.

The landlord gave undisputed evidence that the tenants failed to pay their portion of the utilities for the tenancy. I accept the evidence that the tenancy agreement provides that electricity and natural gas are not included in the monthly rent. I further accept the undisputed evidence of the landlord that the utility arrears is \$75.50 for this tenancy. Accordingly, I grant the landlord a monetary award in that amount.

As neither party was wholly successful in their claim I decline to issue an order that either may recover the filing fee from the other.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,224.50 against the landlord on the following terms:

Item	Amount
Double Security Deposit (\$650.00 x 2)	\$1,300.00
Less Utility Arrears	-\$75.50
TOTAL	\$1,224.50

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 1, 2018

Residential Tenancy Branch